

Mail Stop Interference
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Filed: June 12, 2008

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Merck Patent Gmbh,
Junior Party
(Application 10/239,566,
Inventors: Friedrich Rippmann and Klaus Ducker),

v.

Lexicon Genetics Inc.,
Senior Party
(Patent 7,229,790
Inventors: Carl Johan Friddle, Brenda Gerhardt, and Yi Hu).

Patent Interference 105,594 (RES)
Technology Center 1600

DECLARATION - Bd.R. 203(d)¹

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 An interference is declared (35 U.S.C. § 135(a)) between the above-
2 identified parties. Details of the application(s), patent (if any), reissue application
3 (if any), count and claims designated as corresponding or as not corresponding to
4 the count appear in Parts E and F of this DECLARATION.

5 Part B. Judge managing the interference

6 Administrative Patent Judge Richard E. Schafer has been designated to
7 manage the interference. 37 CFR § 41.104(a).

8 Part C. Standing order

9 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
10 DECLARATION. The STANDING ORDER applies to this interference.

11 Part D. Initial conference call

12 A telephone conference call to discuss the interference is set for, 4:00 p.m.
13 (EDT) on August 12, 2008 (the Board will initiate the call).

14 No later than two business days prior to the conference call, each party shall
15 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (37 CFR § 41.120 & 204;
16 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

17 A time periods for taking action during the motion phase are set in an order
18 accompanying this declaration.

Part E. Identification and order of the parties

Junior Party

Named inventors: Friedrich Rippmann
Klaus Ducker

Involved Application: 10/239,566 filed September 24, 2002

Title: Identification Of Human Gaba Transporter

Assignee: Merck Patent GmbH

Senior Party

Named Inventors: Carl Johan Friddle
Brenda Gerhardt
Yi Hu

Involved Patent : 7,229,790 based on Application 09/940,919 filed August 28, 2001

Title: Novel Human Gaba Transporter Protein And Polynucleotides Encoding The Same

Assignee: Lexicon Genetics Incorporated

17 The senior party is assigned exhibit numbers 1001-1999. The junior party is
18 assigned exhibit numbers 2001-2999. 37 CFR § 41.154(c)(1); SO ¶ 154.2.1. The
19 senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

1 Part F. Count and claims of the parties

2 Count 1

3 Claim 1 of US Patent 7,229,790.

4 Claim 1 of 7,229,790 is:

5 1. An isolated nucleic acid molecule comprising a nucleotide
6 sequence that encodes the amino acid sequence shown in
7 SEQ ID NO:2.

8 The claims of the parties are:

9 Merck (Rippman) Application 10/239,566: Claims: 1-9 and 11

10 Lexicon (Friddle) Patent 7,229,790: Claims: 1-5

11 The claims of the parties that correspond to Count 1 are:

12 Merck (Rippman) Application 10/239,566: Claims: 1-9 and 11

13 Lexicon (Friddle) Patent 7,229,790: Claims: 1, 3, and 5

14 The claims of the parties that do not correspond to Count 1, and therefore are
15 not involved in the interference, are:

16 Merck (Rippman) Application 10/239,566: Claims: None

17 Lexicon (Friddle) Patent 7,229,790: Claims: 2 and 4

18 Benefit

19 The parties are accorded the following benefit for Count 1:

20 Merck (Rippman) Application 10/239,566: None

21 Lexicon (Friddle) Patent 7,229,790: None

22 Part G. Heading to be used on papers

23 The following heading must be used on all papers filed in this interference,

24 see SO ¶ 106.1.1:

Filed on behalf of: *Party* @.

By: *Counsel Name(s)* @

Address @

(@ @ @) @ @ @ - @ @ @ @ (telephone)

(@ @ @) @ @ @ - @ @ @ @ (facsimile)

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1 Part H. Order form for requesting file copies

2 When requesting copies of files, use of SO Form 4 will greatly expedite
3 processing of the request. Please attach a copy of Parts E and F of this

- 1 DECLARATION with a hand-drawn circle around the patents and applications for
- 2 which a copy of a file wrapper is requested.

/Richard E. Schafer/
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Copy U.S. Patent 7,229,790
Copy of claims of Application 10/239,566

Revised 3 January 2006

cc (via overnight delivery):

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